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Attorneys for Defendant Jan Rouven Fuechtener

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

THE UNITED STATES OF AMERICA,

Plaintiff,

v.

JAN ROUVEN FUECHTENER,

Defendant.)

Case No. 2:16-cr-100-GMN-CWH

**DEFENDANT'S RESPONSE
TO MOTION TO CONTINUE TRIAL
DATE (#30)**

DEFENDANT'S RESPONSE TO MOTION TO CONTINUE TRIAL DATE

COMES NOW the defendant, **JAN ROUVEN FUECHTENER**, by and through his attorneys of record, **JESS R. MARCHESE, ESQ.**, and **MICHAEL SANFT, ESQ.**, and hereby files his Response to Motion to Continue (#30).

DATED this 24th day of May, 2016.

/S/ Jess R. Marchese

JESS R. MARCHESE, ESQ.

Nevada Bar No. 8175

Attorney for Defendant

ARGUMENT

The government has moved to continue the June 6, 2016 trial date. Their motion is based upon two issues: 1) that the government's co-counsel is in another trial and 2) that the defense filed a motion to meet with his client in an open-air room.

Counsel for the defense has spoken to his client in reference to the continuance and he has directed counsel to object to the continuance. He will not waive his speedy trial rights based upon co-counsel for the government being in a 5 day trial (this assumes that the defense puts on a two day case in chief). It should be noted that after speaking with counsel for the Federal Public Defender's Office, they do intend upon calling witnesses.

In addition, based upon communications with the court's staff, it is believed that the trial will not begin on the 6th, but rather the 13th due to a conflict with the court's schedule. This will give the government an entire additional week to prepare.

The government also cites that they are "seriously concerned about whether the defense has had an adequate opportunity to personally review the discovery in this case." This allegation is based upon the undersigned's motion to visit his client in an open an air room.

Moreover, if the defense feels that it needs a continuance, it will ask the government to stipulate to one or file the appropriate motion with the court.

Counsel's visitation motion has nothing to do with trial readiness. On average, Mr. Rouven gets 3-4 visits per week from his defense team. Further, as evidenced at the last hearing, counsel is intimately aware of the discovery in this matter. The only reason that counsel will not be ready for trial is because of the government's inability to turn the discovery over in a timely manner.

For example, the government represented in their motion that "one new forensic report was made available to defense counsel yesterday." This is untrue. The last batch of discovery (453-3284) does not contain a forensic report, but rather subpoena requests, Tropicana

1 employment records, Skype chats, Grindr chats, text chats, one witness 302, and a surveillance
2 video procured by the government back in March.

3 At the last hearing, the defense represented that their expert was waiting for the E01s to
4 be disseminated. On April 11th, 2016 they were made available to Mr. Smith for his review, but
5 were not loaded onto the defense computer until last week. This is significant because Mr. Smith
6 cannot perform any forensic analysis until the files are loaded on the one and only defense
7 computer.
8

9 The sole defense computer is full with other static cases causing the devices to have to be
10 acquired into the software and worked on via a USB device rather than being placed directly on
11 the hard drives in the computer. This acquisition of the files took two weeks or more to be
12 downloaded. Mr. Smith was still able to work on the case during this time frame, but it slowed
13 his work down significantly.
14

15 In essence, government's one and only argument is that their co-counsel is in trial.
16 Today the undersigned started a potential life sentence without the possibility of parole Sexual
17 Assault w/ use of Deadly Weapon in State vs. Porter. Further, he continued a First Degree
18 Murder w/ Use of a Deadly weapon trial based upon the conflict with this June 6th trial date in
19 this case. Even with this schedule, counsel intends upon announcing ready at the calendar call.
20
21

22 Based upon the above, the government has not shown good cause to continue the case. If
23 counsel for the defense can be ready while also doing a trial this week, so can the United States
24 of America.

25 **DATED** this 24th day of May, 2016.
26
27
28

/S/ Jess R. Marchese
JESS R. MARCHESE, ESQ.
Nevada Bar No. 8175
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the MARCHESE LAW OFFICES, and that on the 24th day of May 2016, I served a copy of the foregoing: **DEFENDANT'S RESPONSE** via the CM/ECF system upon the following.

Government Counsel:

Ms. Elhan Rouhani, Esq.

Ms. Christina Silva, Esq.

/s/
an employee of Marchese Law Offices